

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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CONSERVATION LAW FOUNDATION, INC.  
Plaintiff,

v.

William Z. Derosia, Jr. d/b/a  
Great Brook Lumber Company  
Defendant.

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Case No. 1:14-cv-10126-DJC

PROPOSED  
CONSENT DECREE

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action on January 15, 2014, against Defendant William Z. Derosia, Jr. d/b/a Great Brook Lumber Company ("Great Brook Lumber"), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, Great Brook Lumber owns and operates a timber products facility located at 20 Industrial Road, Southwick, MA 01077 (the "Facility");

WHEREAS, the Facility discharges stormwater to Great Brook;

WHEREAS, Great Brook Lumber has not applied for a stormwater permit for the Facility;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, CLF has alleged, in its complaint (the "Complaint") and in a letter (the "Notice Letter") dated October 2, 2013, sent to Great Brook Lumber and others, that Great Brook Lumber has violated and continues to violated Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA" or "Act"), 33 U.S.C. § 1365(a); and

WHEREAS, CLF and Great Brook Lumber (collectively, "the Parties" or individually "Party") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Great Brook Lumber of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Great Brook Lumber facility, located at 20 Industrial Road, Southwick, MA 01077, and in the Westfield River Watershed, which are located within this judicial district.

### **II. COMPLIANCE PROGRAM**

3. Great Brook Lumber will develop a written Stormwater Pollution Prevention Plan ("SWPPP") according to the requirements in Parts 5 and 8.A.4 of the United States Environmental Protection Agency ("EPA") National Pollutant Discharge Elimination System ("NPDES") 2008 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("2008 MSGP"), by no later than May 7, 2014. The 2008 MSGP expired on September 29, 2013, and the 2013 MSGP has not yet become effective. The 2008 MSGP, as it may be updated or re-issued from time to time ("MSGP"), is incorporated into this Consent Decree by reference and its requirements, as they may be updated from time to time, are also incorporated herein by reference. Development of the SWPPP shall include, at minimum, the following steps:

- a. Formation of a pollution prevention team of qualified personnel who will be responsible for preparing the plan and assisting the plant manager in implementing practices to comply with the permit;
- b. Assessment of potential stormwater pollution sources;
- c. Selection of appropriate control measures that minimize the discharge of pollutants during storm events for each of these sources; and
- d. Development of procedures for conducting required inspection and monitoring activities, as well as regular maintenance of control measures.

4. Great Brook Lumber has hired Mark W. Popham, R. S., as a consultant to develop its SWPPP. Great Brook Lumber will include the consultant's recommendations in its SWPPP.

5. Great Brook Lumber shall provide a copy of its SWPPP to CLF for review and comment by no later than May 15, 2014. CLF shall respond with comments within twenty-one (21) days of receipt. Within fourteen (14) days of receiving CLF's comments, if any, Great Brook Lumber shall submit a final SWPPP to CLF, incorporating CLF's comments, or justifying in writing why any comment is not being incorporated.



6. Great Brook Lumber will select, design, install, and implement control measures, in accordance with Part 2.1 of the MSGP, to meet numeric and non-numeric effluent limits, subject to Paragraph 8(a), below.

7. Great Brook Lumber will design, install, and implement control measures that include, at minimum, the following categories of site-specific best management practices ("BMPs"):

- a. Good housekeeping practices,
- b. Minimizing exposure of potential pollutant sources to precipitation,
- c. Erosion and sediment control, and
- d. Management of runoff.

8. Great Brook Lumber will design, install, and implement control measures that reduce and/or eliminate pollutant discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable (BAT) and practicable (BPT) in light of best industry practice including, but not limited to the "BMPs for Potential Pollutant Sources at Timber Products Facilities" listed in Table 2 of the EPA *Industrial Fact Sheet Series for Activities Covered by EPA's MSGP (Sector A: Timber Products Facilities)*, available at: [http://www.epa.gov/npdes/pubs/sector\\_a\\_timber.pdf](http://www.epa.gov/npdes/pubs/sector_a_timber.pdf).

- a. CLF acknowledges that Great Brook Lumber has stated an intention to implement control measures sufficient to eliminate all discharges of stormwater associated with industrial activity from the Facility and CLF encourages Great Brook Lumber to do so. If Great Brook Lumber implements control measures that eliminate all discharges of stormwater associated with industrial activity from the Facility prior to or within thirty (30) days after the date that EPA issues the 2013 MSGP, Great Brook Lumber shall not be required to apply for coverage under the 2013 MSGP pursuant to Paragraph 10, below, and shall, therefore, not be required to conduct monitoring pursuant to Paragraphs 11 and 12, below. If Great Brook Lumber implements control measures that eliminate all discharges of stormwater associated with industrial activity from the Facility after obtaining coverage under the 2013 MSGP, Great Brook Lumber shall file a complete and accurate Notice of Termination with EPA. In any event, Great Brook Lumber shall fully comply with the requirements of the Clean Water Act.

9. Wherever feasible, Great Brook Lumber will design, install, and implement control measures that employ a low-impact development (LID) approach. LID is a natural-resource-based alternative approach to site design that incorporates a variety of structural and non-structural techniques, such as vegetated areas that collect, treat and infiltrate stormwater and shallow drainage channels that slow runoff and filter it.

10. Great Brook Lumber will operate in accordance with the 2008 MSGP and will, within thirty (30) days of the date that EPA issues the 2013 MSGP, submit a complete and accurate Notice of Intent ("NOI") for coverage under the 2013 MSGP to the EPA, and send a copy of the NOI to CLF within fourteen (14) days thereof. Great Brook Lumber's NOI shall include a URL linking to the online electronic copy of the Facility's SWPPP.

### **III. MONITORING PROGRAM**

11. Great Brook Lumber will sample its stormwater discharges for pollutants identified in the MSGP for Sector A (i.e., Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), pH, and Debris) as required by the MSGP after its SWPPP is completed. These inspections must be performed pursuant to the requirements of Part 4.1 of the MSGP and include, at a minimum, all areas where waste is generated, received, stored, treated, or disposed of and that are exposed to either precipitation or stormwater runoff. Great Brook Lumber may report this sampling as part of the stormwater monitoring required by the permit. Great Brook Lumber will send a copy of each inspection and/or sampling result to CLF no later than three (3) days after receipt.

12. After completing the sampling required by Paragraph 11 above, Great Brook Lumber will commence monitoring four (4) times per year at all outfalls discharging industrial stormwater from the Facility for pollutants identified in the MSGP for Sector A (i.e., Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), pH, and Debris). The quarterly monitoring must be performed pursuant to the requirements of Part 6 and Appendix B of the MSGP. Great Brook Lumber will send a copy of each inspection and/or sampling result to CLF no later than three (3) days after receipt.

13. Great Brook Lumber will also comply with all other inspection and monitoring requirements of the MSGP including, but not limited to, those of Part 4. Great Brook Lumber will send a copy of each inspection and/or sampling result to CLF no later than seven (7) days after receipt.

14. Great Brook Lumber may take additional samples of its stormwater discharges. If it does so, Great Brook Lumber will send a copy of each such inspection and/or sampling result to CLF no later than three (3) days after receipt.

15. During the first year after the date on which the Court enters this Decree (hereinafter the "Effective Date" of this Decree), Great Brook Lumber shall implement control measures as necessary to meet the benchmark levels for Total Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), pH, and Debris, pursuant to MSGP Part 3.1. If, after the end of one year from the Effective Date of this Decree, Great Brook Lumber's quarterly monitoring results for any parameter exceed MSGP benchmark levels for Sector A, Great Brook Lumber agrees to pay stipulated additional Supplemental Environmental Project payments as set forth in Paragraph 19 of this Decree, subject to Paragraph 8(a), above.



16. During the life of the Decree, CLF, through a third-party professional engineering consultant, may conduct up to two (2) yearly site inspections at the Facility. The site inspections shall occur during normal business hours and upon forty-eight (48) hours prior notice. No CLF attorney or paid staff of CLF shall enter the Facility during these site inspections. During the site inspections, CLF's third-party professional engineering consultant may collect water and soil samples and take photos at the Facility. Any such samples shall be split samples with one of the split samples remaining in the possession of Great Brook Lumber.

17. During the life of the Decree, Great Brook Lumber shall copy CLF on all documents related to surface water or groundwater quality or potential impacts to surface water or groundwater regarding the Facility submitted to any government agency including, but not limited to, the EPA, the Massachusetts Department of Environmental Protection (DEP), and the Town of Southwick. Such documents shall be provided to CLF concurrently as they are sent to the agencies and/or municipalities.

#### **IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

18. Within two years of the entry by the Court of this Decree, Great Brook Lumber shall make a Supplemental Environmental Project ("SEP") payment of eight thousand dollars (\$8,000) to the Westfield River Watershed Association, Inc., P.O. Box 1764 Westfield, MA 01086, for environmental restoration of or other environmental benefit to the Westfield River watershed. Great Brook Lumber shall notify CLF in writing when a payment is made and provide copies of the checks. The SEP payments shall be made according to the following schedule:

- a. \$2,000 within six months of the Effective Date
- b. \$2,000 within twelve months of the Effective Date
- c. \$2,000 within eighteen months of the Effective Date
- d. \$2,000 within twenty-four months of the Effective Date

19. For each exceedance of the MSGP benchmarks described in Paragraph 15 of the Decree, above, Great Brook Lumber will make an additional SEP payment to the Westfield River Watershed Association in the amount of five hundred dollars (\$500) for environmental restoration of or other environmental benefit to the Westfield River watershed. Payment of each such additional amount shall be due fourteen (14) days following each exceedance. Great Brook Lumber shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

20. For each missed deadline included in this Decree, including but not limited to failures to timely conduct quarterly benchmark monitoring and inspections pursuant to Parts 4 and 6 of the MSGP, Great Brook Lumber will make an additional SEP payment to the Westfield River Watershed Association in the amount of five hundred dollars (\$500) for environmental restoration of or other environmental benefit to the Westfield River watershed. Payment of each such additional amount shall be due fourteen (14) days following each missed deadline. Great Brook Lumber shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.



21. None of the SEP payments shall be dispersed to CLF.

#### **V. LIQUIDATED ATTORNEY FEES AND COSTS**

22. On or before July 15, 2014, Great Brook Lumber shall pay to CLF a sum of twelve thousand dollars (\$12,000) as full and complete satisfaction of CLF's claim for attorneys' fees and costs incurred to date in this matter, including without limitation CLF's reasonably anticipated fees and costs incurred in conducting site inspections and other compliance monitoring during the term of this Decree. The payment for CLF's liquidated fees and costs shall be made according to the following schedule:

- a. \$6,000 on or before May 15, 2014
- b. \$6,000 on or before July 15, 2014

23. In the event that any payment owed to the Westfield River Watershed Association or to CLF by Great Brook Lumber under the Decree is not received on or before the due date, Great Brook Lumber shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Great Brook Lumber will pay to CLF liquidated attorney fees of one hundred dollars (\$100) for every day that the payment is late.

#### **VI. EFFECT OF DECREE**

24. CLF covenants not to sue and releases William Z. Derosia, Jr. d/b/a Great Brook Lumber Company (and his/its parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the MSGP at the Facility occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint.

25. William Z. Derosia, Jr. d/b/a Great Brook Lumber Company releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action.

26. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Great Brook Lumber shall constitute or be construed as an admission or acknowledgment by Great Brook Lumber of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Great Brook Lumber retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Great Brook Lumber of any liability, or an admission of violation of any law, by Great Brook Lumber or by its officers, directors, employees, agents, successors, or assigns.

27. CLF does not, by consent to the Decree, warrant or aver in any manner that Great Brook Lumber's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Great Brook Lumber to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

#### **VII. REVIEW AND TERM OF DECREE**

28. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this Decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

29. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate three (3) years from when it is entered by the Court. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

#### **VIII. MODIFICATION AND ENFORCEMENT OF DECREE**

30. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

31. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

#### **IX. MISCELLANEOUS PROVISIONS**

32. This Decree shall remain in effect if Great Brook Lumber relocates the Facility to a different location.

33. Sections I, IV, V, VI, VII, VIII, and IX of this Decree shall remain in effect if Great Brook Lumber ceases to be the operator of the Facility, regardless of whether the Facility continues to operate or not.

34. All payments pursuant to this Decree shall be made in the form of a certified bank check.

35. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence,



communications, agreements and understandings, whether oral or written, among the Parties.

36. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiff shall be sent to:

Zachary K. Griefen, Esq.  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602  
zgriefen@clf.org  
Attorney for CLF

Notice for Great Brook Lumber shall be sent to:

Robert L. Quinn, Esq.  
Egan, Flanagan and Cohen, PC  
67 Market Street - PO Box 9035  
Springfield, MA 01102-9035  
rlq@efclaw.com  
Attorney for Great Brook Lumber

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth on this paragraph.

37. Authorization. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

38. Successors and Assigns. This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

39. Interpretation. The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the



contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

40. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Great Brook Lumber, including its contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree, except for obligations as provided in ¶¶ 18 and 22, notwithstanding Great Brook Lumber's best efforts to avoid the delay. The deadline for the responsibility to perform any action under this Consent Decree may be extended for up to the number of days of nonperformance caused by a Force Majeure event as defined in this ¶ 41, provided that Great Brook Lumber complies with the terms of the Force Majeure sections of this Consent Decree. Examples of events which may constitute Force Majeure events include severe weather events, natural disasters, and national, state or regional emergencies. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, Great Brook Lumber's financial difficulty in performing such work and acts or omissions attributable to Great Brook Lumber's contractors or representatives.

If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, caused by a Force Majeure event, Great Brook Lumber shall notify CLF, at the addresses specified in ¶ 37, above, within three (3) business days after Great Brook Lumber first knows, or should know, that the event might cause a delay. Said written notice to CLF shall include, without limitation: (i) an explanation of the causes of any actual or expected delay or noncompliance; (ii) the anticipated duration of an delay; (iii) the measures taken and to be taken by Great Brook Lumber to prevent or minimize the delay or nonperformance; (iv) a proposed schedule for the implementation of such measures; and (v) a statement as to whether in the opinion of Great Brook Lumber the Facilities can continue to operate in a manner which will not violate the Consent Decree.

If CLF agrees that a delay or anticipated delay in performance is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event may be extended for the period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.


41. Headings. The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

42. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Decree, whether transmitted by facsimile or other means, shall be effective. This Decree may be signed in counterparts.

43. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

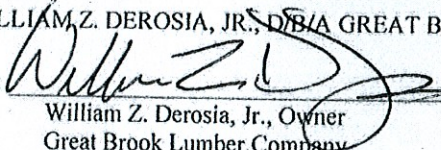


CONSERVATION LAW FOUNDATION

By:   
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ckilian@clf.org

Date: 4/4/14

WILLIAM Z. DEROSIA, JR., D/B/A GREAT BROOK LUMBER COMPANY

By:   
William Z. Derosia, Jr., Owner  
Great Brook Lumber Company  
20 Industrial Road  
Southwick, MA 01077

Date: 4/15/14

ENTERED and DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Honorable Denise J. Casper  
United States District Judge